

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324a Proceeding
	)	
v.	)	OCAHO Case No. 97A00116
	)	
SPRING & SOON FASHION INC.,	)	Judge Robert L. Barton, Jr.
d/b/a Y PLUS S CORPORATION,	)	
d/b/a Y PRUS S CORPORATION,	)	
Respondent.	)	

**ORDER DIRECTING PARTIES TO APPEAR FOR  
A TELEPHONE PREHEARING CONFERENCE**  
*(January 30, 1998)*

In the First Prehearing Order (FPO) issued on January 13, 1998, I ordered the parties, no later than January 26, 1998, to file a pleading proposing alternate dates and times for a telephone prehearing conference. The Order directed the parties to submit a joint pleading signed by both parties agreeing on certain dates and times for the conference but, if the parties could not agree, they were ordered to submit separate proposals. Neither party complied by the due date, but Complainant has filed a pleading explaining that, because of an error by the U.S. Postal Service in the delivery of the mail, she did not receive the Order until Tuesday, January 27, 1998.<sup>1</sup> On that date, Complainant's counsel telephoned my secretary and explained the problem. Counsel was informed by my secretary that she should attempt to contact Respondent's counsel Mr. Aab to submit a joint proposal. Respondent's written proposal to Complainant proposes three possible dates in April, the earliest of which is April 17, 1998, two and a half months from now. Complainant indicates that she is available on two of the April dates, as well as eight other dates in February.

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<sup>1</sup> Attached as Exhibit A to Complainant's pleading was a FAX from Respondent's counsel Mr. Aab dated January 28, 1998, along with Mr. Aab's January 26 letter and a proposed pleading from Mr. Aab dated January 23, 1998, which proposed three possible days in April as alternative dates for the telephone conference.

First, I would note that Respondent has not complied with the FPO. The FPO specifically provided that if the parties could not agree on a joint pleading, each party shall file a separate proposal by January 26, 1998. As provided by the Rules, "file" means the pleading must be received by my office by the due date. 28 C.F.R. §68.8(b). While Complainant's pleading was late filed, that was purportedly due to misdelivery of the FPO by the Postal Service, Complainant's counsel quickly contacted my office once she received the FPO. By contrast, four days after a joint or separate proposals were due, Respondent filed a carbon copy of its January 26 letter to Ms. Tsankov, along with a copy of its proposed pleading. This does not comply with the FPO. First, the proposed pleading is an incomplete joint proposal because it does not contain both attorneys' signatures; the submission contains no indication that Respondent wishes me to consider it as a separate proposal from Respondent. Next, the entire submission purports to be nothing other than a carbon copy of a communication between counsel. Finally, even if this were an appropriate pleading, it would have been filed out of time. Even if Complainant had failed to respond to Respondent's communications, Respondent had an independent duty to comply with the FPO. .

Moreover, Respondent has not explained in his January 26, 1998, letter to Complainant's counsel, or in his proposed pleading accompanying the letter, why he is not available to appear for a one and one half hour telephone conference prior to April 17. The Court is not willing to postpone a conference for more than two months. This case will be processed expeditiously. Consequently, the telephone conference will be held at 9:30 a.m. EST on February 18, 1998. The conference will be conducted pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 556(c), and the OCAHO Rules of Practice and Procedure, 28 C.F.R. § 68.13. A court reporter will be present to record the conference. The conference call will be initiated by my office and should take approximately one to one and a half hours.

During the conference the following topics will be considered:

- (1) the claims in the Complaint and the defenses raised in the Answer, including, but not limited to, the issue of successor liability;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining stipulations or admissions of fact;
- (4) a procedural schedule for the completion of discovery, filing of witness and exhibit lists and the exchange of exhibits, the filing of stipulations, the filing of dispositive motions, the submission of the joint proposed prehearing order, and the date by which the case will be ready for hearing;
- (5) the appropriateness and timing of summary adjudication pursuant to 28 C.F.R. § 68.38;

- (6) the identification of witnesses and documents, the need and schedule for filing and exchanging prehearing briefs and the date or dates for any further conferences and for hearing;
- (7) negotiation, compromise, or settlement of issues;
- (8) the disposition of any pending motions; and
- (9) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

See 28 C.F.R. § 68.13(a) (1997); Fed. R. Civ. P. 16(c).

If a party or party's counsel fails to obey this order, fails to attend the conference, is substantially unprepared to participate in the conference, or fails to participate in good faith, upon motion by the opposing party or on the Judge's own initiative, sanctions may be imposed on the party and/or counsel, including possible dismissal of the complaint or request for hearing or the exclusion of the party's representative, as appropriate. See 28 C.F.R. §§ 68.1; 68.23(c); 68.28; 68.37 (1997). Therefore, unless the telephone conference is postponed, counsel for both parties are expected to be present in their respective offices at 9:30 a.m. EST on February 18, 1998, and to be fully prepared for the conference.

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**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 1998, I have served the foregoing Order Directing Parties to Appear for a Telephone Prehearing Conference on the following persons at the addresses shown, by first class mail, unless otherwise noted:

Mimi Tsankov  
Assistant District Counsel  
Immigration and Naturalization Service  
P.O. Box 2669  
New York, NY 10008-2669  
(Counsel for Complainant)

Spring & Soon Fashion, Inc.  
262 West 38th Street, 15th Floor  
New York, NY 10018  
(Respondent)

Y Plus S Corporation  
d/b/a Y Prus S Corporation  
323 West 39th Street, 7th Floor  
New York, NY 10018  
(Respondent)

Raymond J. Aab, Esq.  
233 Broadway  
New York, NY 10279  
(Attorney for Respondent)

Dea Carpenter  
Associate General Counsel  
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(Hand Delivered)

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